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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/747,165	12/22/2000	Richard W. Tseng	034827-0302	1234
30542	7590	05/20/2003	EXAMINER	
FOLEY & LARDNER P.O. BOX 80278 SAN DIEGO, CA 92138-0278			ART UNIT	PAPER NUMBER

DATE MAILED: 05/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT      PAPER

05-16-03

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**Commissioner for Patents**

The Appeal Brief filed April 15, 2003 is defective since it relies upon Exhibits, specifically the He and Robertson references, which were not timely submitted. These references are not timely because the exact same rejection was applied in both the first action and in the final rejection. These references could have been earlier submitted after the first office action. There was no new ground of rejection made, since the exact same rejection was applied in both the first action and the final rejection. Because Applicant did not file these references timely, these references were denied entry in the Advisory. Inclusion of these arguments in the brief renders it defective because the brief relies upon subject matter which will not be admitted under 37 CFR 1.195. As MPEP 1208 notes "it would be improper for appellant to rely on an affidavit, declaration, or exhibit, which was refused entry, in an appeal brief."

Appellant is required to comply with provisions of 37 CFR 1.195. To avoid dismissal of the appeal, Appellant must comply with the provisions of 37 CFR 1.195 within the longest of any of the following TIME PERIODS: (1) ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing of this communication; (2) within the time period for reply to the action from which appeal has been taken; or (3) within two months from the date of the notice of appeal under 37 CFR 1.191. Extensions of these time periods may be granted under 37 CFR 1.136.



Jeffrey Friedman  
Primary Examiner  
Art Unit: 1634